

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

EZEKIEL DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	NO. CIV-05-0558-HE
)	
RON WARD, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff, a state prisoner appearing pro se, seeks relief under 42 U.S.C. § 1983 for violations of his constitutional rights. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell who issued his Report and Recommendation, recommending that defendants' motion to dismiss plaintiff's complaint for failure to exhaust administrative remedies [Doc. #38] be granted.¹ The matter is currently before the court on plaintiff's objection to the Report and Recommendation.²

Having considered the matter de novo, the court concurs with Judge Purcell's conclusion that plaintiff has failed to fully exhaust his administrative remedies. In particular, the court rejects plaintiff's assertion in his objection to the Report and Recommendation that the court should dismiss only those claims he has failed to exhaust. Pl's Obj., p. 2. As noted


¹*Plaintiff's motion to file a brief in response to defendants' motion in excess of twenty-five (25) pages [Doc. #42] is **GRANTED**.*

²*Because plaintiff has objected to the Report and Recommendation, the matter is reviewed de novo. 28 U.S.C. § 636(b)(1)(C).*

by Judge Purcell, “the PLRA³ contains a total exhaustion requirement” and the presence of unexhausted claims requires dismissal of the entire action without prejudice. Ross v. County of Bernalillo, 365 F.3d 1181, 1189 (10th Cir. 2004). Accordingly, the Report and Recommendation is **ADOPTED** in its entirety and plaintiff’s complaint is **DISMISSED** without prejudice for failure to exhaust administrative remedies.⁴

IT IS SO ORDERED.

Dated this 11th day of May, 2006.



JOE HEATON
UNITED STATES DISTRICT JUDGE

³*Prison Litigation Reform Act, 42 U.S.C. § 1997e.*

⁴*In accordance with the court’s ruling, plaintiff’s motion for trial by jury [Doc. #41] is **DENIED** as moot.*